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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/928,245      | 08/10/2001  | Nikola Vukovljak     | 3882/10             | 5632             |

29858 7590 04/25/2003

BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP  
900 THIRD AVENUE  
NEW YORK, NY 10022

EXAMINER

TAYLOR, BARRY W

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2643

DATE MAILED: 04/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/928,245

Applicant(s)

VUKOVLJAK ET AL.

Examiner

Barry W Taylor

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_.

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## **DETAILED ACTION**

### ***Drawings***

1. Figure 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over “About ISMs, Netcool <sup>TM</sup>/Internet Service Monitors Version 1.1”, Developer: Micromuse, Inc. (hereinafter Micromuse version 1.1), Release date 1999 in view of “Netcool/ISM v2.0 update”, Micromuse, Inc. (hereinafter Micromuse version 2.0), Release date 1999, both found on Applicant’s 1449.

Regarding claims 1-31. Micromuse version 1.1 teaches a method for testing multiple communications network that monitors 12 protocols listed in figure 1 (see figure 1 at the bottom of page 3) because these 12 protocols support the core set of services offered by all ISPs and with this design, can improve the manageability of Internet connections, as well as corporate intranets and extranets (see pages 1-3 especially bottom page 3). Micromuse version 1.1 is limited to the 12 protocols listed in figure 1 (see bottom page 3) and fails to disclose a plurality of “dial” monitor processes (see figure 1 on page 3 wherein “DIAL” is not taught).

Micromuse version 2.0 reveals six new monitors for yielding a total of 18 monitors available (see “Six New monitors for ISM 2.0” listed on page 2). The six new monitors include (see: DIAL, DHCP, NTP, NRT, SNMP and TRANX wherein the “DIAL” monitors dialup service over modem, establish PPP connection, can perform arbitrary tests over established connection. Micromuse version 2.0 also provides (see “ISMv2 – ISMServer updates” listed on page 6) for easy of use improvements, profile restricted/rights restricted views, enhanced Service Level Agreements (i.e. SLAs), as well as service level compliance events.

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Therefore, it would have been obvious for any one of ordinary skill in the art at the time of the invention as taught by Micromuse version 1.1 to incorporate the six new monitors as taught by Micromuse version 2.0 for the benefit enabling the monitor to DIAL up service over modem and perform arbitrary tests, as well as, conducting SLA compliance reports in plain English as taught by Micromuse version 2.0.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

---(6,148,337) Estberg et al.

---(6,147,975) Bowman-Amuah.

---(6,795,697) Bowman-Amuah.

---(6,460,058) Koppolu et al.

---(6,542,593) Bowman-Amuah also discloses using Micromuse Internet Service Monitors, which monitor internet services, collect availability and performance data and forward the information as alerts to the Omnibus Netcool Object Server (see all).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor whose telephone number is (703) 305-4811. The examiner can normally be reached on Monday-Friday from 6:30am to 4pm.

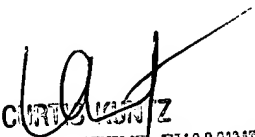
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone number for this Group is (703) 872-9314.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 customer service Office whose telephone number is (703) 306-0377.

  
CURT W. SMITH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600